

Article - Health - General

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§18–338.1.

- (a) (1) In this section the following words have the meanings indicated.
- (2) (i) “Body fluids” means:
 - 1. Any fluid containing visible blood, semen, or vaginal secretions; or
 - 2. Cerebrospinal fluid, synovial, or amniotic fluid.
- (ii) “Body fluid” does not include saliva, stool, nasal secretions, sputum, tears, urine, or vomitus.
- (3) “Exposure” means as between a patient and a health care provider:
 - (i) Percutaneous contact with blood or body fluids;
 - (ii) Mucocutaneous contact with blood or body fluids;
 - (iii) Open wound, including dermatitis, exudative lesions, or chapped skin, contact with blood or body fluids for a prolonged period; or
 - (iv) Intact skin contact with large amounts of blood or body fluids for a prolonged period.
- (4) “Health care facility” means a facility or office where health or medical care is provided to patients by a health care provider, including:
 - (i) A health care facility as defined in § 19–114(d)(1) of this article;
 - (ii) A facility operated by the Department or a health officer;
 - (iii) The office of a health care provider; or
 - (iv) A medical laboratory.

(5) (i) “Health care provider” means a person who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health or medical care in:

1. The ordinary course of business or practice of a profession; or

2. In an approved education or training program.

(ii) “Health care provider” includes any agent or employee of a health care facility.

(iii) “Health care provider” does not include any individual who is eligible to receive notification under the provisions of § 18–213 of this title, including any law enforcement officer or any member of any fire department, ambulance company, or rescue squad.

(6) “HIV” means the human immunodeficiency virus that causes acquired immune deficiency syndrome.

(b) Except as provided in § 18–338.3 of this subtitle, a physician, nurse, or designee of a health care facility shall, at the request of an exposed health care provider, seek the informed consent of a patient to test a blood sample of the patient for the presence of HIV when:

(1) There has been an exposure between the patient and the health care provider;

(2) The health care provider involved in the exposure has given prompt written notice of the exposure, in accordance with the standards of the health care facility, to the chief executive officer or the chief executive officer’s designee of the health care facility where the exposure occurred;

(3) The exposure occurred based on the judgment of a physician who is not the health care provider involved in the exposure; and

(4) The health care provider involved in the exposure has given informed consent and has submitted a blood sample to be tested for the presence of HIV in accordance with the provisions of subsection (d) of this section.

(c) If, by virtue of the physical or mental condition of a patient, a physician, nurse, or designee of a health care facility is unable to obtain the informed consent of the patient to test a blood sample of the patient for the presence of HIV in accordance with subsection (b) of this section, the physician, nurse, or designee of the health care

facility shall seek the consent of any person who has authority to consent to medical care for the patient as provided under § 5–605 of this article or as otherwise authorized by law.

(d) If the patient's informed consent has been obtained in accordance with subsection (b) of this section or substitute consent has been obtained in accordance with subsection (c) of this section and the other requirements of subsection (b) of this section have been satisfied, a physician or the physician's designee shall:

(1) Collect the blood sample from the patient and health care provider involved in the exposure; and

(2) Have the blood samples tested for the presence of HIV using a test procedure approved by the Department.

(e) When a physician obtains the results of a test for the presence of HIV that was conducted in accordance with the provisions of subsection (d) of this section, the physician or a designee of the health care facility shall directly notify the health care provider and the patient of the results of the patient's HIV test.

(f) The notification required under subsection (e) of this section shall:

(1) Be made within 48 hours of confirmation of the results of the patient's HIV test;

(2) Include subsequent written confirmation of the possible exposure to HIV; and

(3) To the extent possible, be made in a manner that will protect the confidentiality of the health care provider and the patient.

(g) If the results of a test for the presence of HIV that was conducted in accordance with the provisions of subsection (d) of this section are positive, a physician or the physician's designee shall provide or arrange for the provision of appropriate counseling to the health care provider and the patient.

(h) (1) Notwithstanding the provisions of Title 4, Subtitle 3 of this article, the records, including any physician order for an HIV test or the results of an HIV test performed on a blood sample of a patient or a health care provider in accordance with the provisions of this section, may not be documented in the medical record of the patient or health care provider.

(2) The health care facility shall maintain a separate confidential record or incident report for all HIV tests performed on a blood sample of a patient or health care provider in accordance with the provisions of this section.

(3) The health care facility shall adopt procedures for the confidential testing of blood samples obtained in accordance with the provisions of this section.

(4) Except as provided in paragraph (5) of this subsection, the records, including any physician order for an HIV test or the results, of any HIV test performed on a blood sample of a patient or health care provider in accordance with the provisions of this section are:

(i) Confidential; and

(ii) Not discoverable or admissible in evidence in any criminal, civil, or administrative action.

(5) If the identity of the patient or any other information that could be readily associated with the identity of the patient is not disclosed, the results of an HIV test performed on a patient or health care provider in accordance with the provisions of this section may be introduced into evidence in any criminal, civil, or administrative action including the adjudication of a workers' compensation claim.

(i) The costs incurred in performing an HIV test on a patient or health care provider in accordance with the provisions of this section shall be paid by the health care facility.

(j) All health care facilities shall develop written procedures to implement the provisions of this section.

(k) A health care provider or health care facility acting in good faith to provide notification or maintain the confidentiality of the results of a test for the presence of HIV in accordance with the provisions of this section may not be held liable in any cause of action related to a breach of patient or health care provider confidentiality.

(l) The Medical and Chirurgical Faculty of the State of Maryland in consultation with the Centers for Disease Control and Prevention, the Maryland Hospital Association, and the Maryland Department of Health shall develop a practice protocol for physicians who are infected with HIV.

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